IN THE HIGH COURT OF UTTARANCHAL,

AT NAINITAL

A.O. No. 214/2004

1- Smt. Vimla Devi W/o Late Soorveer Singh,
2- Dinesh S/o Late Soorveer Singh
3- Manoj S/o Late Soorveer Singh
4- Kmn. Rajni D/o Late Soorveer Singh
5- Theepad Singh S/o Late Narayan Singh
6- Smt. Kaushaliya Devi W/o Theepad Singh,
All R/o Village Gandikhata Pargna Jwalapur,
Tehsil & District Haridwar ..Claimants / Appellants.

Vs.

Uttaranchal Parivahan Nigam/ U.P. State Road Transport Corporation, Dehradun, Depot Bus No. U.P. 07-G 2876, Through its General Manager, Dehradun Depot Dehradun …. Opposite Parties/ Respondent.

Sri Naresh Pant, learned counsel for the appellants.
Sri Amar Nath Sharma, learned counsel for the respondent.

(Hon'ble B.C. Kandpal, J.)

This appeal, U/S 173 of the Motor Vehicle Act, for enhancement of compensation, has been preferred by the claimants, against the judgment and award dated 10-6-2004, passed by Ist Addl. District Judge/M.A.C.T., Haridwar, in MACP No. 101/2003, Smt. Vimla Devi and others Vs. U.P. Parivahan Nigam/U.P.S.R.T.C., whereby the claim petition was partly allowed and the claimants were awarded compensation of Rs. 1,64,500/- along with interest @ 9% per annum.

2- The facts of the case, in short, are that on 2-9-2003 Soorveer Singh driving the scooter, bearing registration U.A. 07-1728, went near Pili Nadi via Haridwar- Gendikhata National High Way No. 74, suddenly roadway bus of Dehradun Bus Depot bearing registration No. U.P. 07G 2876 came there at a high speed and hit the scooter due to which the riders of the scooter, Bijendra Singh Rawat and Soorveer Singh sustained grievous injuries and died. The claimants are the wife, sons, daughter and parents of deceased Soorveer Singh. The deceased at the time of accident was 43 years of age and was a

hawker and used to sell clothes and was also doing the agricultural work, and his earning was Rs. 5000/- per month. The claimants filed claim petition for compensation of Rs. 15,05,000/- in lieu of death of Soorveer Singh.

3- The Opposite Party Uttaranchal Parivahan Nigam filed its W.S. and admitted the accident by the roadways bus. But it alleged that the bus was being driven at a moderate speed. At about 3.30 P.M. when the scooterists tried to overtake the truck they lost their control seeing the roadways bus coming from the front side and the accident occurred due to their own fault. It was also alleged that the owner and insurer of the scooter were not made party to the petition. The scooter was being driven by the person having no driving licence, hence, the opposite party is not liable to pay compensation.

4- The Claim Tribunal framed the following issues on the basis of pleading of parties:-

1- Whether on 2-9-2003 at about 3 P.M. on National Highway No. 74 at Haridwar Nazibabad road the driver of roadway bus No. U.P. 07 G-2876 dashed the scooter UA 007-1728 by rash and negligent driving, due to which Scooter driver Soorveer Singh sustained injuries and died?. If so, its effect?.

2- Whether the deceased on the date of accident was 43 years of age and was earning Rs. 5,000/- per month from the agricultural works? If so its effect?.

3- Whether on the date of the accident the scooter driver was not having valid driving license and other papers?. If so, its effect?.

4- To what amount of compensation, the claimants are entitled to get and from whom?.

5- Whether the claim petition is bad for nonjoinder of owner and insurer of the scooter?.

6- Whether the accident occurred due to the fault of scooter driver?. If so, its effect?.

5- The parties adduced oral as well as documentary evidence in support of their cases. The Tribunal on hearing the learned counsel for the parties and perusing the material on record awarded compensation of Rs. 1,64,500/- along with interest @ 9% from the date of presentation of petition till the final payment against the O.P.

6- Being dissatisfied with the compensation awarded by the Tribunal, the claimants/appellants have preferred this appeal for enhancement.

7- Heard learned counsel for the parties and perused the record.

8- Learned counsel for the appellants submitted that the Tribunal has erred in not accepting the claimants evidence about the income of the deceased and in assessing his income at Rs. 15,000/- per annum only. Learned counsel for the appellants also submitted that the notional income requires re-consideration.

9- On the other hand the learned counsel for the respondent supported the award and submitted that as the claimants could not establish the income of the deceased pleaded by them, the Tribunal was left with no other option but to assess his income on the basis of notional income prescribed in the Second Schedule U/s 163-A of the Motor Vehicle Act.

10. The findings recorded by the Tribunal that the deceased died on account of the injuries sustained by him in the motor accident; that the accident occurred due to the rash and negligent driving of the driver of roadways bus; that the scooterist and the driver of roadways bus both had valid driving licences; that the roadways bus was having valid papers and that the owner and insurer of the scooter were not necessary party to the claim petition as the accident occurred due to the rash and negligence of the roadways driver and the claimants preferred claim petition against the owner of the roadways bus, have now attained finality as the respondent has not filed any appeal

against the award. Now the only point which remains to be adjudicated is as to whether the compensation awarded to the claimants is adequate or not?

11- In support of his submission, the learned counsel for the claimants/appellants has cited the decision of Division Bench of this Court in the matter of **Jogender Singh and another Vs. M.s The New India Assurance Company and another;** reported in **2006 (2) U.D., 431.** The Division Bench in the cited case has held that the notional income of Rs. 15,000/- per annum U/S 163-A of the Act was prescribed in the year 1994 and considering the depreciation in the purchase value of the Rupee, in the year 2000, the notional income of Rs. 15000/- per annum would come to Rs. 30,000/- per annum, but the deceased, being a truck driver, could have easily earned Rs. 3000/- per month, his income would be Rs. 36,000/- per annum. The Division Bench also made provision for deduction of 1/3rd towards personal expenses of the deceased. The claimants in the cited case were parents of the deceased.

13- The accident in the instant case occurred in the year 2003. Following the principle laid down by the Division Bench in the aforesaid cited case, the notional income would come to Rs. 30,000/- per annum, but the deceased, being a hawker and a farmer, could have easily earned Rs. 3000/- per month, his income would be Rs. 36,000/- per annum. By deducting 1/3rd of Rs. 36,000/- as the personal expenses of the deceased the claimants dependency is assessed at Rs. 24,000/- per annum.

14- Considering that the claimants are wife, sons, daughter and parents of the deceased Soorveer Singh and at the time of accident the deceased was 43 years of age, the multiplier of ‘15’ would be appropriate as per the Second Schedule U/S 163-A M.V. Act.

15- By multiplying the annual dependency of Rs. 24,000/- with the multiplier of ‘15’ the compensation works out to Rs. 3,60,000/- to

which the claimants/appellants are etitled to get along with interest @ 9% per annum as awarded by the Tribunal.

16- The appeal is accordingly partly allowed. The impugned judgment and award dated 10-6-2004 is modified up to the extent that the claimants/appellants are entitled to get a total sum of Rs. 3,60,000/- along with interest @ 9% per annum from the date of O.P./respondent, as compensation, instead of Rs. 1,64,500/- as awarded by the Tribunal.

15- The amount awarded by the Tribunal under the other different heads is set aside.

(B.C. Kandpal, J.)

Dated: 12-12-2006
ISB